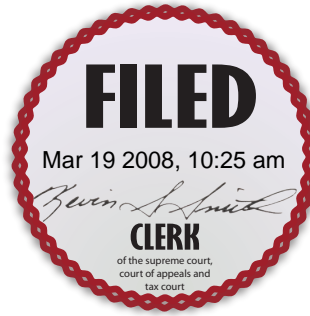


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

**GREGORY BOWES**  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**ANN L. GOODWIN**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

DARRIEN ALLEN,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 49A04-0708-CR-462

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Mark Stoner, Judge  
Cause No. 49G06-0604-FA-071288

---

**March 19, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Following his plea of guilty to rape as a Class A felony, Darrien Allen appeals his advisory sentence of thirty years with five years suspended. Specifically, he argues that the trial court erred in considering his subsequent arrests as an aggravator and that his sentence is inappropriate. Finding that the trial court did not abuse its discretion in identifying Allen's subsequent arrests as an aggravator and that Allen's twenty-five-year executed sentence for raping a stranger at gunpoint is not inappropriate, we affirm the trial court.

## **Facts and Procedural History**

In April 2006, Allen was charged with rape as a Class A felony, attempted robbery as a Class C felony, criminal confinement as a Class D felony, and theft as a Class D felony. In July 2007, Allen pled guilty to rape as a Class A felony,<sup>1</sup> and the remaining charges were dismissed. The plea agreement provided that Allen's sentence was "open to argument with a cap of thirty (30) years on initial executed time." Appellant's App. p. 62 (emphasis and capitalization omitted). According to the factual basis presented by the State:

[O]n or about April 13th, 2006, at about 6:00 a.m., Deputy David Loyal, at that time of the Marion County Sheriff's Department, was dispatched to Labor Ready in Indianapolis, Indiana, located at 2728 Westlane Road, and there did come into contact with a [F.G.], a black female, who stated that a black male had come into the business at about 5:30 that morning. He had on a brown hooded sweatshirt and some bluejeans. He did take a black, a small black semi-automatic gun, pointed it to her, led her to the bathroom, where he told her to take off her panties, at which time she told him that she was on her menstrual period. He insisted that she take off her panties again, and pointed the gun at her. She took her panties down. He took out

---

<sup>1</sup> Ind. Code § 35-42-4-1.

a condom, placed it on his penis, and he began to rape her. On April 20th, 2006, Sgt. Hasty and Hanson, with at that time the Marion County Sheriff's Department, went to [F.G.'s] home and showed her a photo array. She immediately and without hesitation pointed to Darrien Allen and said that that's the one who raped her.

Tr. p. 30-31. The trial court accepted Allen's plea agreement. At the sentencing hearing, the trial court identified the following mitigating circumstances: (1) Allen accepted responsibility for this offense and pled guilty (however, the court gave this mitigator minimal weight because Allen's sentence cap was so low); (2) Allen was nineteen years old at the time of the offense; (3) Allen had no prior significant criminal history (however, the court gave this mitigator minimal weight because Allen had multiple serious offenses pending against him at the time of sentencing in this case); (4) hardship to Allen's child and to his sister's children (however, the court gave this mitigator minimal or no weight because Allen maintained a gun and drugs in the presence of those children and did not pay child support for his child); and (5) Allen was under the influence of drugs at the time of this offense and needs substance abuse treatment. The court identified as an aggravator that on April 18, 2006, just five days after Allen committed this offense, he committed other offenses. According to the PSI, the offenses to which the trial court referred were for Class C felony burglary and Class D felony criminal recklessness, and these charges were pending at the time of sentencing in this case.<sup>2</sup> Finding that the mitigators and aggravator balanced, the trial court sentenced Allen to the advisory term of thirty years with five years suspended. Allen now appeals his sentence.

---

<sup>2</sup> As detailed later in this opinion, Allen had seven charges under three different cause numbers pending against him at the time of sentencing in this case. The trial court only referenced the offenses from one of these cause numbers when articulating this aggravator.

## Discussion and Decision

Allen challenges his sentence raising two issues. First, he contends that the trial court erred in identifying his subsequent arrests as an aggravator. Second, he contends that his sentence is inappropriate.

### I. Aggravator

Allen contends that the trial court erred in identifying his subsequent arrests as an aggravator.<sup>3</sup> Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.*

“Although an arrest record is not evidence of prior criminal history, ‘[t]his information is relevant to the court’s assessment of the defendant’s character and the risk that he will commit another crime and is therefore properly considered by a court in determining sentence.’” *Miller v. State*, 709 N.E.2d 48, 49 (Ind. Ct. App. 1999) (quoting *Tunstill v. State*, 568 N.E.2d 539, 545 (Ind. 1991)). Further, arrests that take place after the crime for which the sentence is being imposed are proper considerations in sentencing. *Id.* Allen acknowledges this authority and asks us to reconsider it. We decline his invitation. The fact that Allen was arrested for offenses after he committed

---

<sup>3</sup> Although Allen had seven charges pending against him at the time of sentencing in this case, the record is unclear as to the order in which these offenses were committed in relation to when the instant offense was committed. It appears that Allen committed at least two of the seven offenses after committing the instant offense.

this offense is relevant to the risk that he will commit another crime. The trial court did not abuse its discretion in identifying Allen's subsequent arrests as an aggravator.

## **II. Inappropriate Sentence**

Next, Allen contends that his sentence is inappropriate. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The burden is on the defendant to persuade us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)). After due consideration of the trial court's decision, we cannot say that Allen's sentence is inappropriate.

As an initial matter, we note that the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Anglemyer*, 868 N.E.2d at 494. Therefore, when the trial court imposes the advisory sentence, the defendant bears a heavy burden in persuading us that his or her sentence is inappropriate. *See McKinney v. State*, 873 N.E.2d 630, 647 (Ind. Ct. App. 2007), *trans. denied*. And, as Justice Dickson noted in his concurrence in *Childress*, "A defendant's conscious choice to enter a plea agreement that limits the trial court's discretion to a sentence less than the statutory maximum should usually be understood as strong and persuasive evidence of

sentence reasonableness and appropriateness.” 848 N.E.2d at 1081 (Dickson, J., concurring). Here, Allen pled guilty to a Class A felony. “A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years.” Ind. Code § 35-50-2-4.

Regarding the nature of the offense, Allen raped a woman he did not know, while she was at work, at gunpoint. As for the character of the offender, Allen was nineteen years old at the time of the offense and was under the influence of both drugs and alcohol. In addition, Allen pled guilty to the offense and has a young son. Although at the time of this offense Allen had a minimal criminal record consisting of a juvenile adjudication for resisting law enforcement, at the time of sentencing in this case Allen had seven unrelated charges under three different cause numbers pending against him for Class C felony robbery, Class D felony criminal recklessness, Class B felony robbery, two counts of Class A felony rape, and two counts of Class A felony criminal deviate conduct. Given the nature of the offense and the character of this offender, Allen’s advisory sentence of thirty years with five years suspended is not inappropriate.

Affirmed.

SHARPNACK, J., and BARNES, J., concur.